

Remarks

Claims 1-12, 18, 25, 29, 30, 32 and 34 have been amended. Claims 13-24, 26-28, 31 and 33 have been withdrawn from consideration in response to a Restriction Requirement mailed August 27, 2002. New claims 35-37 have been added. The new claims simply individually recite each of the three plant species listed in claim 2. Because claim 2 finds support throughout the specification, the new claims do not, therefore, raise any issues of the introduction of new matter.

Applicants note that the Examiner has listed claim 18 as being withdrawn on the Office Action Summary page and has, on page 2 of the office action, described claims 1-12, 25, 29, 30, 32 and 34 as the only claims under examination. However, the Examiner has listed claim 18 in her rejection of the claims under Section 112, first and second paragraphs and in her objection to select claims as being dependent from non-elected claims. Further, claim 18 is also listed in the Restriction Requirement as belonging to the inventions of Group I (which Applicants elected) and Group III. Applicants have therefore treated claim 18 as being suitable for examination and allowance in the subject application and have included claim 18 in the remarks below.

I. Specification

In response to the Examiner's objection to the use of an ampersand (&) in the title of the subsection application, Applicants have amended the title to replace the ampersand with the word "and." Applicants therefore request that this objection be withdrawn.

II. Rejection Under 35 U.S.C. § 112, first paragraph

Claims 1-12, 18, 25, 29, 30, 32 and 34 have been rejected under 35 U.S.C. § 112, first paragraph, because the Examiner states that while the specification is enabling for a method of treating and reducing the risk of development of non-insulin dependent type II diabetes in a mammal, it does not provide reasonable enablement for the treatment or prevention of any and all types of diabetes in a mammal.

Applicants have amended claims 1 and 25 to restrict the diabetes being treated or

prevented to Type II diabetes and to a human or mammal in need thereof. Because the Examiner has acknowledged enablement in the specification for the treatment or prevention of Type II diabetes in mammals, Applicants request that the grounds for this rejection be withdrawn.

III. Rejection under 35 U.S.C. § 112, second paragraph

A. "Extract"

Claims 1-12, 18, 25, 29, 30, 32 and 34 have been rejected because the Examiner contends that the term "extract" is indefinite and does not adequately delineate the metes and bounds of claim 1.

Applicants have amended claims 1 and 32 to restrict the extract to containing one or more steroidal glycosides. Support for this amendment can be found in the specification at, for example, page 2, lines 13-14 and at page 4, lines 17-19. As amended, claims 1 and 32 have clearly defined boundaries that would be recognized by one of ordinary skill in the art. Applicants therefore request that the ground for this rejection be withdrawn.

B. "the Eluate"

Claim 8 has been rejected because the Examiner states that there is insufficient antecedent basis for the recitation of the phrase "the eluate."

Applicants have amended claim 8 to replace "the eluate" with "an eluate." Because no antecedent basis is required for "an eluate," Applicants request that the ground for this rejection be withdrawn.

C. "Pro-drugs"

Claim 11 has been rejected because the Examiner contends that the phrase "pro-drug" is indefinite.

Although Applicants do not agree with the Examiner's statement, claim 11 has been amended without prejudice or disclaimer to delete the phrase "pro-drug" in order to further prosecution. As such, Applicants request that the ground for this rejection be withdrawn.

Applicants reserve the right to pursue "prodrug" claims in a continuation or divisional application.

IV. Claim Objections

Claim 18 is objected to as being improperly dependent on a non-elected claim. Applicants have amended claim 18 to place it in independent form. Withdrawal of this objection is therefore requested.

Claim 25 is objected to as being improperly dependent on a non-elected claim. Applicants have amended claim 25 to make it dependent on claim 1. Withdrawal of this objection is therefore requested.

Claim 30 is objected to as depending on a claim that follows it, namely claim 31. Applicants have amended claim 30 to make it dependent on claim 29. Withdrawal of this objection is therefore requested.

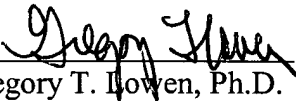
V. Conclusion

Upon consideration of the foregoing, it will be recognized that Applicants have fully and appropriately responded to all of the Examiner's rejections and objections. The amendments to the claims are fully supported by the specification and claims as filed and do not add new matter. Accordingly, the claims are believed to be in proper form in all respects and a favorable action on the merits is respectfully requested.

Except for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application, including fees due under 37 C.F.R. §§1.16 and 1.17 which may be required, including any required extension of time fees, or to credit any overpayment to Deposit Account No. 50-0310. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully Submitted,

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